

§ 85.830

Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Department of Education may seek further criminal, civil or administrative action against you, as appropriate.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

§ 85.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that—

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

§ 85.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In

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so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

§ 85.840 How is fact-finding conducted?

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Department of Education agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

§ 85.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in § 85.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 85.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.